

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

RTI HOLDING COMPANY, LLC, *et al.*,

Debtors.

Chapter 11

Case No. 20-12456 (JTD)

(Jointly Administered)

Re: Docket Nos. 51 & 87

**RESERVATION OF RIGHTS OF AD HOC GROUP OF PLAN PARTICIPANTS TO
DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS, PURSUANT
TO SECTIONS 105, 361, 362, 363, 364 AND 507 OF THE BANKRUPTCY CODE, (I)
AUTHORIZING THE DEBTORS TO OBTAIN POSTPETITION FINANCING, (II)
AUTHORIZING THE DEBTORS' USE OF CASH COLLATERAL, (III) GRANTING
ADEQUATE PROTECTION, AND (IV) GRANTING RELATED RELIEF**

The Ad Hoc Group of Plan Participants (the "Ad Hoc Group") by and through undersigned counsel, respectfully submit this reservation of rights (the "Reservation") to the *Motion of Debtors For Entry Of Interim And Final Orders (I) Authorizing Debtors To (A) Obtain Postpetition Financing Pursuant To 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), and 364(e) and (B) Use Cash Collateral Pursuant to 11 U.S.C. § 363, (II) Granting Adequate Protection Pursuant to 11 U.S.C. §§ 361, 362, 363, and 364, And (III) Scheduling Final Hearing* (the "Motion") [ECF Docket No. 51]. In support of this Reservation, the Ad Hoc Group respectfully states as follows:

1. On October 7, 2020 (the "Petition Date"), the Debtors each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code with the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), which cases have been jointly consolidated for administrative purposes only (the "Chapter 11 Cases"). The Debtors continue to operate their businesses and manage their properties as debtors and debtors-in-possession pursuant to 11 U.S.C. §§ 1107(a) and 1108. No trustee or examiner has been appointed

in the Chapter 11 Cases.

2. The Ad Hoc Group consists of participants who are retirees, current and former employees of the Debtors (“Plan Participants”) in non-qualified retirement plans (the “Plans”) of certain of the Debtors.

3. Pursuant to (i) *Ruby Tuesday, Inc.'s Motion for an Order Authorizing Ruby Tuesday, Inc. to Exercise Its Ownership Rights Over Trust Assets Currently Held in a "Rabbi Trust" for Ruby Tuesday, Inc.'s Non-Qualified Executive Supplemental Pension Plan and Management Retirement Plan* [ECF Docket No. 138] and *Ruby Tuesday, Inc.'s Motion for an Order Authorizing Ruby Tuesday, Inc. to Exercise Its Ownership Rights Over Trust Assets Currently Held in a "Rabbi Trust" for Ruby Tuesday, Inc.'s Non-Qualified "Defined Contribution" - Deferred Compensation Plans* [ECF Docket No. 140] (collectively, the “Retirement Asset Confiscation Motions”), the Debtors seek to obtain ownership rights to more than \$27 million in assets held for the benefit of Plan Participants, including members of the Ad Hoc Group. The Debtors propose to make immediate use of these assets (liquidating them where necessary) in lieu of obtaining DIP financing from its customary sources (existing or new secured lenders). In other words, the Debtors and its owners seek to finance these Chapter 11 Cases on the backs of their current and former employees.

4. The DIP Budget attached to the Interim DIP Order projects in week 5 the receipt of approximately \$22.6 million on account of Plan assets and in week 6 another \$5.2 million in Plan assets, each presuming the Debtors will prevail in summary fashion in connection with the Retirement Asset Confiscation Motions.

5. The Ad Hoc Group submits this Reservation to assert its position that it does not agree that the Debtors will ultimately prevail in connection with the Retirement Asset

Confiscation Motions, and certainly should not prevail with preclusive effect by Weeks 5 or 6 in the DIP Budget. The Ad Hoc Group intends vigorously to contest the Retirement Asset Confiscation Motions on numerous procedural and substantive grounds¹ and this Court may require significant time to resolve contested issues. The Ad Hoc Group may be entitled to stay adverse determinations pending reconsideration or appeal, or to adequate protection for Plan Participants' reversionary interests which the Debtors will be unable to furnish. Litigation significant to the disposition the Plans' assets is pending in the United States District Court for the Northern District of Alabama, and may further complicate and delay resolution of material questions. The net effect of this is the liquidity under the DIP Budget being overstated by at least \$27 million going forward from week 6.

6. Further, to the extent the Court approves the proposed financing notwithstanding this substantial shortfall, the Ad Hoc Group submits that any order approving the DIP Financing should not in any way be deemed dispositive in connection with the myriad of issues raised by the Retirement Asset Confiscation Motions or otherwise impact or diminish the Ad Hoc Group's rights to fully litigate all issues in connection with the Retirement Asset Confiscation Motions. Accordingly, the Ad Hoc Group reserves all of its rights and submits that any proposed order expressly provide that all rights of the Ad Hoc Group are fully reserved in connection with the Retirement Asset Confiscation Motions and the determination of ownership rights related to the proceeds of the Plans.

¹ The Ad Hoc Group's oppositions to the Retirement Asset Confiscation Motions are presently due to be filed by November 5, 2020.

Dated: October 29, 2020
Wilmington, Delaware

GIBBONS P.C.

By: /s/ Howard A. Cohen

Howard A. Cohen (Del. Bar No. 4082)
300 Delaware Ave., Suite 1015
Wilmington, DE 19801-1671
Telephone: (302) 518-6300
Facsimile: (302) 429-6294
Email: hcohen@gibbonslaw.com

-and-

Robert K. Malone
One Gateway Center
Newark, New Jersey 07102-5310
Telephone: (973) 596-4500
Facsimile: (973) 596-0545
Email: rmalone@gibbonslaw.com

-and –

HOLIFIELD & JANICH, PLLC

Al Holifield
1107 Kingston Pike, Ste. 201
Knoxville, TN 37934
Telephone: (856) 566-0115
Facsimile: (856) 566-0119
Email: aholifield@holifieldlaw.com

Counsel to the Ad Hoc Group

CERTIFICATE OF SERVICE

I, Howard A. Cohen,, hereby certify that on this 29th day of October, 2020, I caused a true and correct copy of the foregoing pleading to be served via CM/ECF on all parties who have registered for electronic service in these cases.

Dated: October 29, 2020
Wilmington, Delaware

/s/ Howard A. Cohen
Howard A. Cohen (No. 4082)